

Date of decision: 28th June 1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of

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thereunder?

5. Whether it is to be circulated to the Civil Judge?

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Mr.M.R.Anand,GP with Mr.A.J.Desai, AGP for the petitioner

Mrs.Nita U.Bhatt, L.A. for the respondents  
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Coram: N.J.Pandya & A.R.Dave,JJ.  
June 28, 1996

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C.A.V. JUDGMENT (Per N.J.Pandya,J.)

As the matter pertained to a learned single Judge, it came to be dealt with by the then the Honourable the Chief Justice Shri B.N.Kirpal on 17-6-1995. It was brought to the notice of the learned Judge that there is difference of opinion among the two learned Judges of the Court on the question involved in the revision. One view is taken by our learned brother B.C.Patel, J. and that has been reported in 1995 (1) GLH 512. It is a case between State of Gujarat vs. State Bank of Saurashtra. Another view is taken by our learned brother Y.B.Bhatt, J. in R.C.Sharma vs. State of Gujarat--1995(1) GLH 19 (UJ).

2. The question relates to a money suit filed by the bank or a creditor against a debtor for recovery of loan advanced. So far as statutory material is concerned, Sec.18 of the Bombay Court Fees Act 1859 has to be looked at. It deals with multifarious suits. Where a suit is found to be multifarious, the amount of court-fee chargeable shall be the aggregate amount of fees to which the plaint in suits embracing separately each of such subjects would be liable under this Act. So far, there cannot be any problem.

3. In order to understand the concept of multifarious suits, one has to turn to the provisions of Civil Procedure Code. Multifariousness may arise as per the provisions of Orders 1 and 2 of the said Code, when parties and cause of action have been wrongly shown together. In the question before us, there is no such situation as to joinder of wrong parties.

4. As a result, one has to concentrate only on Order 2 Rule 3, which permits joinder of causes of action against the same defendant or the same defendants jointly may be united and only one plaint need be filed. Sub-Rule 2 provides that in such eventuality, pecuniary jurisdiction of the Court shall be governed by the amount or value of the aggregate subject matters at the date of instituting the suit. Sec.18 of the Court-fees Act refers to subject or distinct subjects. Order II Rule 3 refers to causes of action in sub rule (1) and subject matters in sub rule (2). It can, therefore, safely be said that the words "cause of action and/or "subject matters" are used synonymously. In banking transaction subject matter being advance of money, the view taken by our brother Y.B.Bhatt, J. is that it is only one subject matter namely advance of money whereas the view taken by our brother B.C.Patel,J. is that cause of action arises out of different loans advanced on different dates at different rate of interest and repayable at different

periods and involving the charges created on different properties on different dates.

5. Before we proceed further, one more statutory provision not so far referred to by either of our learned brothers, is required to be referred to. It is the Suit Valuation Act 1887 as applicable to the State of Gujarat. Section 8 is the relevant provision for our purpose. It reads as under:

Court-fee value and jurisdictional value to be the same in certain suits: Where in suits other than those referred to in (clause (d) of paragraph (iv), paragraphs (v), (vi) (vii) and (x) and clause (d) of paragraph (xi) in Section 6 of the Bombay Court-fees Act 1959 (Bom XXXVI of 1959) Court-fees are payable ad valorem under the Bombay Court-fees Act, 1959, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

There cannot be any dispute that for valuation purposes the said provision of Sec.8 will govern the suit for recovery of the money advanced. Value both for court-fee as well as jurisdiction shall therefore, be the same. Sec.8 does not make a distinction between suits involving different causes of action or different subject matters. Section 18 of the Court Fees Act being in the State Act and Sec.8 of the Suit Valuation Act being a provision under the Central Act, arguably it can be said that Sec.18 carves out an exception to Sec.8. As an argument, this might appear to be attractive. However, a clear cut provision in Central Statute cannot be said to be overruled by a State provision unless there is an express provision in that regard.

6. We don't carry on discussion with regard to the overruling aspect for the simple reason that there is no conflict between the two. Unless it is held that the suit is multifarious, there is no question of Sec.8 of the Suit Valuation Act not being attracted.

7. Our learned brother Justice B.C.patel has taken utmost pain and has referred to as many as 7 authorities. The first one brought to his notice was AIR 1952 Bombay 376, where a Division Bench was considering a matter involving a suit for balance on account. A categorical view taken by the Honourable Judges of the Bombay High Court in that matter was to the effect that the Court fee payable was not on each item in the khata but on the

aggregate. That matter was dealt with under Sec.17 of the Indian Court Fees Act which was applicable to the State of Bombay at the relevant time. Sec.17 is found to be *peri materia* with Section 18 of the Bombay Court-fees Act. Incidentally, this would indicate that Sec.18 of the Suit Valuation Act and Sec.17 of the Indian Court-fees Act were existing side by side without creating any problem of conflict. The learned Judge has distinguished the said Bombay Decision, which is a binding authority on fact, that there was a single account involved having 9th item debited in the khata which remained undischarged and the suit was for balance due in one account which was continuous. In the matter before the learned Judge, on fact it was found that there were 3 different accounts opened by executing different agreements. The learned Judge has also expressed himself to the effect that on fulfillment of the respective terms and conditions alone, the accounts can be brought to an end, the word used is "terminated" and demand made in respect of each of the accounts. On this basis the learned Judge has found that it is not a case of "continuous account".

8. The learned Judge has thereafter posed a further question that suppose in the case before him the defendant deposits some amount in one account, would it be open for the Bank to divide it into 3 parts and give credit in 3 different accounts and the answer given is "no".

9. In our opinion, the distinction made on fact is hardly of any importance. Firstly, it is in the nature of a loan transaction where a Bank having found it to be credit worthy had agreed to advance money to the defendant. The opening of 3 accounts and entering into 3 different contracts as found by the learned Judge are matters of details for administrative as well as accounting purposes. By no stretch of imagination would a merchant think that a person who has borrowed money from the Bank that is a debtor, cannot be said to be indebted to the Bank for the aggregate of all the 3 accounts with interest included at the rates agreed to between the Bank and the debtor. For banking purposes as well as for commercial transaction purposes, a party can be said to be indebted to the Bank of the total amount that has been advanced by the Bank, may be under different heads.

10. To elucidate this further, take an example of total indebtedness being to the tune of Rs.50 lakhs. For the purposes of safety of the money advanced, this may be

broken up into 3 different components, one may be clean overdraft, relatively a smaller component, may be 10% ; the remaining may be divided equally into two further components like pledge, hypothecation, bill purchase facility, bill discount facility etc. Necessarily therefore, keeping in mind the provisions of Transfer of Property Act, the Negotiable Instruments Act and other relevant provisions, to take care of the transactions as covered by different components, there has to be different contracts. However, from the banking point of view, it is lending a sum of Rs.50 lakhs to its customer. It is, therefore, difficult to understand how it would be a different cause of action or a different subject matter. In any case, it will be a matter of one account only which has been divided into 3 parts by the Bank for its administrative, commercial as well as legal purposes.

11. So far as the credit of the amount paid by the debtor in different account in respect of which the learned Judge has posed a question, the answer to which is to be found in Section 59 of the Contract Act 1870. It is a statutory form given to Rule in Clanton's case. The application of payment of debt is entirely left to the discretion of the debtor. If he has not given any instruction obviously, the creditor can apply it to any of its debts including in a given case a time barred debt. Bombay decision, in our opinion, apart from being a binding one lays down the correct proposition that in a matter involving lending of money what is found at the foot of the account should be looked at and the debtor having entered into different agreements with the Bank in respect of different components of advances would be of no consequence. Obviously, therefore, Sec.8 of the Suit Valuation Act will be attracted and Court fee payable shall be on the same amount as the one that will govern the jurisdiction. For this purpose, reference may again be made to Orders 2 & 3 of the Civil Procedure Code.

12. The learned Advocate, who appeared before our learned brother Justice B.C.Patel had cited AIR 1978 Punjab and Haryana 273 where a suit for damages was filed detailing out different amount of compensation claimed by each one of it and yet, it was not considered to be a distinct subject by the learned Judges of the Punjab and Haryana High Court. The learned Judges have brought out in our opinion, very effectively all distinct subjects referred to in Sec.17 of the Central Act corresponding to Sec.18 such subjects which are quite independent of each other and do not arise out of or relating to the same set of facts. According to the learned Judges, different subjects would be those which arose out of different

causes of action. That is in consonance with the provisions of the Civil Procedure Code which is the only statutory material available for our purpose to understand the concept of cause of action.

13. In our opinion, our learned Brother Justice Patel is right in relying upon AIR 1973 SC 2384 and holding that mere astuteness in drafting plaint will not be allowed to stand in the way of the Court to look at the substance of the relief asked for. However, in the instant case, as in the case before the learned Judge, in our opinion, and with utmost respect to him, the substance itself was asking for total amount that was due from the debtor to the creditor and therefore, there is hardly any scope of astuteness in drafting.

14. Needless to say, in the case before the learned Judge (B.C.Patel,J.) the relief asked for in the plaint was total amount due and therefore, the Court fee payable would be on that total amount. This would be in consonance with Sec.8 of the Suit Valuation Act which unfortunately was not brought to the notice of our learned Brother B.C.Patel,J. at all. We are quite sure that if Sec.8 was brought to his notice, it would have been duly considered and applied with the result which we have arrived at.

15. So far as the decision of the Gujarat High Court reported in CLT (22) 1995 page 113 is concerned, it clearly involves two different agreements to purchase different quantities of cotton at different rates and on top of it, attempt was made to evaluate the relief at Rs.300/- and pay Court-fee of Rs.30/-.

16. This is possible only and only if a declaratory relief under Sec.6(iv)(j) of the Court-fees Act 1959 is sought for or the case is covered by item No.23(F) of Second Schedule which takes care of the matters which are not otherwise provided for. Obviously, neither of these two provisions are available because what the plaintiff wanted in the suit was refund of money said to have been deposited or found due in respect of each of the said two different contracts. That would be a classic case of two distinct causes of action permitted to be brought together by statutory provision but for which, the suit would be hit by the provisions of multifariousness and therefore, Court fee payable was to each of the items thus claimed. The defect was two fold. The suit was not properly evaluated as per the provisions of the Suit Valuation Act and therefore, obviously there was error in the assessment of Court-fee on one hand and filing of the

suit in a Court not having pecuniary jurisdiction on the other. If Sec.8 of the Suit Valuation Act was borne in mind the said error would not have occurred. There is a distinct possibility that it was a deliberate exercise which was rightly caught by the trial Court and curbed by the said Division Bench.

17. In this background, if we turn to the Judgment of Justice Y.B.Bhatt delivered on 4-2-1995, Bank had filed a suit for recovery of Rs.1,99,096,629.47 ps. with interest at 10.5%. There were different transactions relating to different components of advances as could be expected. The transaction as found to be pertaining to the relief of money decree which was an equitable relief sought in respect of a single quantified amount. One of us, (Justice N.J.Pandya) on earlier occasion, had dealt with a similar question while dealing with CRA No.411 of 1989. The learned Judge, in our opinion, has rightly concentrated on the reliefs as claimed in the plaint and it being in consonance with the claim putforth in the plaint as to money advanced on different dates the single quantified amount found in the relief clause was dealt with in the manner with which we are dealing with in the instant case more particularly with reference to the Bombay Suits Valuation Act.

18. It will now be aposite to refer to the main provision of the Court-fees Act which prescribes the rate at which the fee is to be computed. The provision is to be found in Sec.6 and Sub-Sec.(1) thereof will be applicable because the suit is for money. When the words are "for money", it would necessarily mean "a suit for getting decree for money and the Court fee is to be computed as per the amount claimed.

19. A look at the plaint clearly indicate that the amount claimed is nothing else but the grand total of the said different components of advances.

20. Order VII Rule 1 of the Code of Civil Procedure prescribes requirement as to the plaint. Clause (e) relates to the facts constituting the cause of action and when it arose. Clause (g) relates to the relief which the plaintiff claims and clause (i) provides for a statement of the value of the subject matter of the suit for the purpose of jurisdiction and of Court-fees, so far as the case admits.

21. As the suit is for money, the case does admit valuation. Again, it may be noted that cause of action

and subject matter are used as interchangeable terms.

22. Our earlier conclusion is further thus reenforced by the said provision of the Civil Procedure Code that details as to the various accounts would be the facts constituting the cause of action which is nothing else but return of money advanced to the debtor-defendant and valuation of the subject matter will be with reference to the relief prayed for.

23. It is therefore, the relief which is to be valued both for the purposes of Court Fees and jurisdiction. Once this is done with reference to Sec.6 of the Court Fees Act read with Sec.8 of the Suit Valuation Act, obviously, there would be no application of Sec.18 of the Court Fees Act. That alone would be enough to reject the Reference filed That alone would be enough to reject the Reference filed Court.

24. However, we have given this detailed judgment largely because of the said conflict found by the Honourable Chief Justice in the judgment given by Justice B.C.Patel on one hand and Justice Y.B.Bhatt on the other.

25. In our opinion, therefore, the view taken by Justice Y.B.Bhatt is correct and we hold that the aggregate of different components constituting the total amount, for which relief has been asked for in the plaint by way of money decree, will be valued for jurisdiction and Court fee and ad-valorem Court fee thereon shall be paid as per Sch.I of Bombay Court Fees Act. The Order of the Trial Court is confirmed. Rule is discharged with no order as to costs.

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